

**Milford, New Hampshire
1 Union Square
Milford, NH 03055
April 11, 2016**

**“Brox Community Lands” Property
Request for Proposal Sand and Gravel Excavation Operation**

I. Introduction

The Town of Milford owns an approximate 145 acre parcel that was formerly part of the Brox sand and gravel excavation site. Residents have approved a town warrant that authorizes the excavation and sale of sand and gravel from the site. The purpose of this request is to obtain, from qualified operators, a proposal for contracted operation of the project. The town is seeking proposals which shall include, at a minimum:

- 1) Work efforts to be provided by the operator to include but not be limited to:
 - a) Clearing and grubbing as needed.
 - b) Furnishing and installing BMP's as required.
 - c) Maintaining existing access roads.
 - d) Excavation and sale of sand and gravel materials.
 - e) Reclamation of the pit area.
 - f) Preparation of a plan to control access to the portion(s) of the site being utilized.
- 2) Anticipated income to the town.
- 3) Frequency of payments.
- 4) Application for and obtaining all necessary state and local reviews including but not limited to: Alteration of Terrain, Wetlands, and RSA 155:E as may be appropriate,
- 5) Anticipated time to completion, and site grading and reclamation consistent with the plans attached hereto. (All permits shall be in the name of the Town.)
- 6) Although the Town is the owner of the property, selected excavator will be subject to periodic inspections by Town Staff and its consultants. It is expected that all plans for the resource area will be followed and adhered to.

The license granted by the Town of Milford specifically authorizes the Operator to:

- 1) Access all areas of the site necessary to move, load, weigh, store, process, screen, or remove the sand and gravel materials.

- 2) Provide supervised access to the site for purchasers of the sand and gravel in order to load, measure and transport the sand and gravel materials.
- 3) Establish an area on the site to set up a portable screening operation together with area sufficient to stockpile processed materials.
- 4) Construct additional access roads necessary for the above purposes with the agreement of the Town.
- 5) Any other activity authorized in writing by the Town.
- 6) The operator shall have the exclusive right to sell materials to third parties during the initial term and extensions of the License.
- 7) Operator shall be entitled to leave boulders and stumps in manners and locations directed by the Town.

II. Resources

Provided herewith is a feasibility study report, dated January 29, 2015, the Soil Investigation Summary dated November 28, 2014 as well as preliminary plans for the development of the site prepared by Fieldstone Land Consultants. For the purpose of the proposal, the data and plans can be considered as accurate and no additional site investigation, such as additional test pits or borings, shall be provided by the town. Additional data and phasing site plans that may be required as part of the operator's permitting process shall be the responsibility of the operator.

III. Requirements

The operator shall be responsible for obtaining and maintaining, through the life of the project, insurance meeting the following requirements, at a minimum. The Town of Milford shall be identified as an "also insured".

Project: Total material available is approximately 635,000 yards located in a 44 acre area on the southern portion of the site as depicted on the plan entitled "Preliminary Development Plans, Brox Community Lands, Tax Map 38 – Lot 58, Heron Pond Road, Milford, New Hampshire 03055," dated 12/1/14, last revised 4/12/16. Additional material will remain in this area for use by the Public Works Department.

Access: Access to the pit area shall be restricted to an existing gravel road which leads from the pit towards the 101 By-pass; this road connects to Perry Road which is paved. Two homeowners live off of Perry Road and care must be given at all times to both residents and the public who may be walking, biking or driving along the roadway. The operator is expected to maintain the gravel roadway during operations.

Dust: The award winning contractor shall develop a dust control plan

Rocks: If rocks and boulders are not used by the operator, they shall be piled along the edge of the property in areas determined by the Town and shall not be buried.

Plans: Detailed grading plans have been created by the Town's civil consultant Fieldstone. It is anticipated that changes will be required to these plans to meet the excavator's goals and establish phasing areas. In addition, NHDES Alteration of Terrain permit will be required along with potential wetland fill which will also require permits. The cost of all permits shall be the responsibility of the excavator.

Timber: The Town will negotiate with the excavator relative to the potential revenue stream found from timber harvesting from the site in the area of the proposed excavation.

IV. Proposal

The following information shall be included within the proposal:

- 1) A statement indicating the experience the operator has had with similar projects including working on projects subject to State and Federal permits and oversight and experience meeting environmental standards. Four applicable references shall be included.
- 2) A statement outlining the staff and equipment the operator will utilize to complete the project. The project manager should be identified. The proposal shall be signed by an authorized individual.
- 3) Proof of insurances to include \$ 5 million general and automobile liability as well as worker's compensation. The Town of Milford will have to be included as an "also insured" by the successful bidder.
- 4) The proposer shall include an approximate schedule of work including permitting, operation, and reclamation.
- 5) Details of how payments will be made to the down and verification procedures that will be in place documenting material that has been removed from the site.
- 6) Any and all exceptions to the above.
- 7) Responses to all items enumerated in the Introduction on page 1.

Proposals shall be returned by May 6, 2016 to:

Mr. Mark Bender, Town Administrator
Milford Town Hall
1 Union Square
Milford, NH 03055

Please call 603-249-0600 with questions or to arrange to view the site.

V. Additional Information

Insurance

Operator shall procure and maintain insurance in forms and amounts for protection under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness or disease or death of any and all employees or of any other person other than such employees, and from damages because of injury to or destruction of property including loss of use resulting there from. Operator shall list the Town of Milford as an additional insured on the operator's general liability insurance policy and shall provide the Town of Milford with a copy of the Certificate of Insurance.

Prior to commencement of any work under this agreement and until completion and final acceptance of the work, the Operator shall, at its sole expense, maintain the following insurance evidencing same and reflecting the effective date of such coverage as follows:

- 1) Commercial General Liability \$5,000,000 occurrence/\$5,000,000 General Aggregate.
- 2) Workers Compensation \$1,000,000/\$1,000,000/ \$1,000,000.
- 3) Automobile \$5,000,000 Combined Single Limit.

Indemnity

To the fullest extent allowed by law, Operator agrees to save, indemnify, and keep Town , its officers, officials, agents, employees, and volunteers, harmless against any and all liability, claims, judgments, costs, and demands, including demands arising from injuries or death of persons (Operator's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Operator, save and except claims or litigation arising through the sole negligence or sole willful misconduct of Town and will make good to and reimburse Town for any expenditures, including reasonable attorneys' fees, Town may incur by reason of such matters, and if requested by Town , will defend any such suits at the sole cost and expense of Operator.

In the event Operator or its insurer refuses or fails to provide a legal defense to Town after receiving written notice of the legal action and a tender and demand for defense, Town shall have the right to select counsel of its own choice to represent all the Town 's interests. Operator agrees that the amount of legal costs and expenses including attorneys' fees may be withheld by Town from any Agreement amounts due and owing to Operator until such time as a final determination is made as to the responsibility for payment of the fees and costs.

Compliance with Law

Operator certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, or national

origin; that Operator is in compliance with all federal, state, local directives, and executive orders regarding non-discrimination in employment; and that Operator agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

Notices

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

Town of Milford
Town Administrator
1 Union Square
Milford, NH 03055

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

Licenses and Qualifications

Operator represents and warrants to Town that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Operator represents and warrants to Town that Operator shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit or approval which is legally required for Operator to perform its professional duties under this Agreement.

Agreement Execution Authorization

Each of the persons executing this Agreement represent and warrant that they are authorized to sign this Agreement on behalf of the entity for which he/she is signing and empowered to bind such entity.

Jurisdiction

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of New Hampshire. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

Attorneys' Fees

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which he may be entitled.

Waiver

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, and term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

Modifications and Amendments to Agreement

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

Successors in Interest

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

Assignments

No assignment by Operator of this Agreement or any part hereof, or of funds to be received hereunder, will be recognized by Town unless such assignment has had prior written approval and consent of Town, which consent will not be unreasonably withheld.

Entire Agreement

This Agreement and its Exhibits constitutes the entire understanding and agreement of the Parties hereto and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to the subject matter hereof. No parol evidence shall be permitted to contradict or vary the terms of this Agreement.

Severability

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the reminder of that provision, or the remaining provisions of this Agreement.

Recitals

The Recitals above are hereby incorporated into this section as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

Conflicts

To the extent that there is any conflict between the provisions of this Agreement and the Operator's proposal for services, the terms and conditions of this Agreement shall govern.

IN WITNESS WHEREOF, this Agreement has been executed in the name of Town by its officers thereunto duly authorized, and Operator as of the day and year first written.

"TOWN"

TOWN OF MILFORD

By: _____
Mark Bender, Town Administrator

Date

ATTEST:

By: _____
_____, Town Clerk

"OPERATOR"

By: _____
Signature

Print Name and Title

Company Name

Date